

The State of South Carolina



Office of the Attorney General

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January 8, 1987

The Honorable Charlie G. Williams
State Superintendent of Education
South Carolina Department of Education
Rutledge Building
1429 Senate Street
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the advice of this Office to whether emergency regulation 43-269 of the State Board of Education (Board) concerning the promotion of students also prescribes scholastic standards of achievement. The Education Improvement Act provisions codified in Section 59-5-65 of the Code of Laws of South Carolina (1976), as amended, require the Board to take the following action:

- (3) Promulgate rules prescribing scholastic standards of achievement. The rules shall take into account the necessity for scholastic progress in order that the welfare of the greatest possible number of pupils shall be promoted....

* * *

- (7) By January 1, 1986, establish criteria for promotion of students to the next higher grade....

Your letter states that you believe that R43-269 satisfies rule making requirements for scholastic standards of achievement as well as for promotion criteria.

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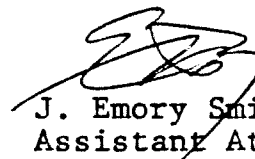
Although paragraph 7 of Section 59-5-65(7) provides some criteria for promotion standards, paragraph 3 of this statute provides no definition or express guidance as to what rules are required for "scholastic standards". Therefore, reference must be made to other sources for the meaning of paragraph 3. The provision concerning scholastic standards is very similar to an earlier statutory provision giving school district boards of trustees the authority to promulgate rules concerning scholastic standards of achievement and standards of conduct. Section 59-19-90(3). This latter version for district boards of trustees has been interpreted as giving districts broad rule making authority. Ops. Atty. Gen. (January 28, 1966). Therefore, Section 59-5-65(3) may be interpreted as giving the Board broad rule making authority with respect to scholastic standards. See also, Section 59-5-60(3). This discretion appears to be particularly great because the term "scholastic" generally has a broad meaning related to school, learning or academics. Webster's Third New International Dictionary, "scholastic". Finally, any determination by the Board as to this matter would be governed by the rule that administrative interpretation of a statute by the agency having administrative and enforcement authority under a law is entitled to great weight. Sutherland Statutory Construction, Vol. 2A Section 49.05 and Vol. 3 Section 65.05. See also, Stephenson Finance Co. v. S.C. Tax Commission, 242 S.C. 98, 130 S.E.2d 72 (1963). Therefore, a conclusion by the Board that R43-269 satisfies the very broad authority given to the Board to adopt scholastic standards would be entitled to great weight. Because Section 59-5-65(3) requires the promulgation of scholastic standards of achievement, such a conclusion by the Board should be included in R43-269 or be referenced in a separate rule. If the Board believes that it needs further guidance in exercising its discretion under Section 59-5-65(3), legislative clarification may be desirable because of the absence of express guidance in Section 59-5-65(3).

In conclusion, because the legislature has given the State Board of Education broad rule making authority with respect to scholastic standards and because this term is broad in meaning and has not been defined by the legislature, a court would most probably give great weight to a determination by the Board that R43-269 satisfies scholastic standards as well as promotion criteria. If the Board desires any additional guidance as to the meaning of this term, legislative clarification may be desirable.

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If you have any questions, please let me know.


Yours very truly,



J. Emory Smith, Jr.
Assistant Attorney General

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REVIEWED AND APPROVED:



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